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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,353	01/26/2005	Ian M Robertson	55525501 2830	1392
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PATENT GROUP 2N				
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901 LAKESIDE AVENUE				
CLEVELAND, OH 44114				
EXAMINER				
NICKERSON, JEFFREY L				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
07/24/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/522,353

Applicant(s)

ROBERTSON, IAN M

Examiner

JEFFREY NICKERSON

Art Unit

2442

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant's arguments have been fully considered but are deemed unpersuasive.

Claim 1:

Applicant argues the combined teachings of Ramsdell and Klein failed to render obvious a limitation within this claim. Specifically, applicant argues that the combined teachings fail to render obvious the following: "wherein said determining whether the outgoing message is related to the previously received message is based upon the outgoing message and the previously received message having at least a portion of message content in common or comprising a message thread."

The examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the examiner clearly articulated in the Final Rejection dated 17 April 2009 how the inter-related teachings of both Ramsdell and Klein render obvious this argued limitation. It is recited again below:

Ramsdell teaches determining an outgoing message is related to a previously received message when the outgoing message's destination address is the same as the previously received message's origin address (Ramsdell: pg 10, lines 28-40). Thus, Ramsdell provides for wherein said determining whether the outgoing message is related to the previously received message is based upon the outgoing message and the previously received message having a characteristic in common. Klein teaches wherein messages are determined to be related based on their contents (Klein: Figure 7, col 11, lines 43-52; See also col 11, lines 27-38). Thus, Klein provides for wherein a characteristic used for determining related messages is message contents or a message thread, and the combined teachings provide for the above-argued limitation.

Claim 3:

Applicant argues the combined teachings of Ramsdell and Klein failed to render obvious a limitation within this claim. Specifically, applicant argues that the combined teachings fail to render obvious the following: "wherein the received message comprises an attachment, and wherein the step of determining whether the outgoing message includes a portion of a previously received message comprises the step of determining whether the outgoing message includes the attachment."

The examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, and using a generalization of the references with respect to applicant's key arguing points, Ramsdell teaches the majority of the language of the claims, including identifying an outgoing message is related to a previously received one. Ramsdell is silent as to the expansive options/characteristics one of ordinary skill would consider when attempting to identify related messages. Klein discloses various characteristics of messages that may be considered when attempting to identify related messages, including contents and attachments. Therefore, the combined teachings provide for the above-argued limitation.

Applicant's arguments are ultimately unpersuasive and, therefore, the rejections of claims 1-49 are maintained per rationale indicated above and that found in the Final Rejection dated 17 April 2009.